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Attorneys for Defendants

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

BROADBAND GRAPHICS, LLC,

Plaintiff,

v.

FXCM HOLDINGS LLC and FOREX  
CAPITAL MARKETS LLC,

Defendants.

FXCM HOLDINGS LLC and FOREX  
CAPITAL MARKETS LLC,

Counter-complainant,

v.

BROADBAND GRAPHICS, LLC,

Counterdefendant.

CASE NO.: CV-10-261-RHW

**DEFENDANTS' ANSWER,  
COUNTERCLAIMS, AND JURY  
DEMAND**

**JURY TRIAL DEMANDED**

DEFS' ANSWER, COUNTERCLAIMS, AND  
DEMAND FOR JURY TRIAL - 1

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1 Defendants FXCM Holdings LLC and Forex Capital Markets LLC  
2 (collectively "FXCM") hereby answer the Complaint for Patent Infringement  
3 ("Complaint") filed by plaintiff Broadband Graphics, LLC ("Broadband  
4 Graphics"). To the extent not expressly admitted, FXCM denies each and every  
5 allegation of the Complaint.<sup>1</sup>

6 **I. NATURE OF LAWSUIT**

7 1. FXCM admits that the Complaint purports to be an action for patent  
8 infringement. Except as so admitted, FXCM denies the allegations of paragraph 1.

9 **II. THE PARTIES**

10 2. FXCM is without knowledge or information sufficient to form a belief  
11 as to the truth of the allegations of paragraph 2 and on that basis denies the  
12 allegations.

13 3. FXCM admits that FXCM Holdings LLC and Forex Capital Markets  
14 LLC are Delaware limited liability companies with their principal place of business  
15 in New York, NY.

16 **III. JURISDICTION AND VENUE**

17 4. FXCM admits the allegations of paragraph 4.

18 5. FXCM denies the allegations in paragraph 5.

19 6. FXCM admits the allegations of paragraph 6.

20 **IV. BACKGROUND**

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22 <sup>1</sup>To the extent the Complaint's headings constitute allegations that require a  
23 response, FXCM denies these allegations.

1 7. FXCM is without knowledge or information sufficient to form a belief  
2 as to the truth of the allegations of paragraph 7 and on that basis denies the  
3 allegations.

4 8. FXCM is without knowledge or information sufficient to form a belief  
5 as to the truth of the allegations of paragraph 8 and on that basis denies the  
6 allegations.

7 9. FXCM is without knowledge or information sufficient to form a belief  
8 as to the truth of the allegations of paragraph 9 and on that basis denies the  
9 allegations.

10 10. FXCM is without knowledge or information sufficient to form a belief  
11 as to the truth of the allegations of paragraph 10 and on that basis denies the  
12 allegations.

13 11. FXCM admits it is an online provider of foreign exchange trading and  
14 related services through a proprietary technology platform. Except as so admitted,  
15 FXCM denies the allegations in paragraph 11.

16 12. FXCM denies the allegations of paragraph 12.

17 13. FXCM denies the allegations of paragraph 13.

18 **V. FXCM'S ALLEGED INFRINGEMENT OF THE '765 PATENT**

19 14. FXCM denies the allegations of paragraph 14.

20 15. FXCM denies the allegations of paragraph 15.

21 16. FXCM denies the allegations of paragraph 16.

22 **VI. FXCM'S ALLEGED INFRINGEMENT OF THE '947 PATENT**

23 17. FXCM denies the allegations of paragraph 17.

18. FXCM denies the allegations of paragraph 18.

19. FXCM denies the allegations of paragraph 19.

## **VII. JURY DEMAND**

FXCM hereby demands a trial by jury of all issues so triable.

## **VIII. PRAYER FOR RELIEF**

FXCM denies the allegations, or is without knowledge or information sufficient to form a belief as to the truth of the allegations and on that basis denies the allegations, as set forth in Broadband Graphics' Prayer for Relief, and contends that Broadband Graphics is not entitled to the relief prayed for therein, or any relief.

## **AFFIRMATIVE DEFENSES**

### **FIRST AFFIRMATIVE DEFENSE**

U.S. Patent Nos. 7,313,765 and 7,539,947 (the "Asserted Patents") are invalid because they fail to satisfy the requirements of Title 35 of the United States Code, including, but not limited to, one or more of 35 U.S.C. §§ 101, 102, 103 and/or 112.

### **SECOND AFFIRMATIVE DEFENSE**

FXCM does not infringe, induce others to infringe, or contributorily infringe any valid, enforceable claim of the Asserted Patents. In addition, FXCM has not infringed, induced others to infringe, or contributorily infringed any valid, enforceable claim of the Asserted Patents.

1 **THIRD AFFIRMATIVE DEFENSE**

2 By reason of the proceedings in the United States Patent and Trademark  
3 Office during the prosecution of the applications which resulted in one or more of  
4 the Asserted Patents, or any applications related thereto, and by reason of the  
5 admissions and representations therein made by or on behalf of the applicant for  
6 one or more of the Asserted Patents, Broadband Graphics is estopped from  
7 construing the claims of one or more of the Asserted Patents to cover and include  
8 any acts of FXCM.

9 **FOURTH AFFIRMATIVE DEFENSE**

10 Upon information and belief, some or all of the claims of the Asserted  
11 Patents are limited and/or barred by laches, waiver, and/or estoppel.

12 **FIFTH AFFIRMATIVE DEFENSE**

13 Broadband Graphics is not entitled to injunctive relief because any injury to  
14 Broadband Graphics is not immediate or irreparable and Broadband Graphics has  
15 an adequate remedy at law.

16 **SIXTH AFFIRMATIVE DEFENSE**

17 Some or all of the damages claimed by Broadband Graphics are limited  
18 pursuant to 35 U.S.C. §§ 286-288.

19 **SEVENTH AFFIRMATIVE DEFENSE**

20 FXCM reserves the right to assert any further or additional defense upon  
21 receiving more complete information regarding the matters alleged in the  
22 Complaint, through discovery or otherwise.

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**COUNTERCLAIMS**

FXCM for its counterclaims alleges:

**THE PARTIES**

1. FXCM Holdings LLC and Forex Capital Markets LLC are limited liability companies organized and existing under the laws of the State of Delaware with their principal place of business in New York, New York.

2. Upon information and belief, Broadband Graphics is a Washington limited liability company.

3. Upon information and belief, Broadband Graphics claims to be the owner of the U.S. Patent Nos. 7,313,765 and 7,539,947 (the "Asserted Patents"). Broadband Graphics has filed a complaint for patent infringement alleging that FXCM has infringed one or more claims of the Asserted Patents.

**JURISDICTION AND VENUE**

4. FXCM claims and seeks a declaration from the Court that, pursuant to the Patent Laws of the United States, Title 35, United States Code, each and every claim of the Asserted Patents is invalid and not infringed. Broadband Graphics alleges that the claims of the Asserted Patents are valid and infringed by FXCM. Accordingly, an actual controversy within the meaning of 28 U.S.C. §§ 2201 and 2202 exists between FXCM and Broadband Graphics with respect to the invalidity and non-infringement of the Asserted Patents.

5. This Court has jurisdiction over the subject matter of this counterclaim pursuant to 28 U.S.C. §§ 1331, 1338, and 2201-2202.

6. This Court has personal jurisdiction over Broadband Graphics.

1 7. Venue for this counterclaim is appropriate within this judicial district  
2 pursuant to 28 U.S.C. § 1391(b).

3 **FIRST COUNTERCLAIM**

4 **(Declaratory Judgment of Non-Infringement of the Asserted Patents)**

5 8. FXCM re-alleges and incorporates herein by reference each and every  
6 allegation contained in paragraphs 1 through 7.

7 9. Broadband Graphics alleges that it owns the Asserted Patents.  
8 Broadband Graphics alleges that FXCM has infringed, induced others to infringe,  
9 and contributorily infringed the Asserted Patents.

10 10. FXCM denies that it has infringed, induced others to infringe, or  
11 contributorily infringed the Asserted Patents.

12 11. An actual and justiciable controversy exists between FXCM and  
13 Broadband Graphics regarding non-infringement of the claims of the Asserted  
14 Patents.

15 12. Accordingly, FXCM hereby seeks entry of a declaratory judgment  
16 that it does not infringe any claim of the Asserted Patents.

17 **SECOND COUNTERCLAIM**

18 **(Declaratory Judgment of Invalidity of the Asserted Patents)**

19 13. FXCM re-alleges and incorporates herein by reference each and every  
20 allegation contained in paragraphs 1 through 12.

21 14. Broadband Graphics alleges that the claims of the Asserted Patents are  
22 valid.

1 15. FXCM alleges that the claims of the Asserted Patents are invalid  
2 because they fail to satisfy the requirements of Title 35 of the United States Code,  
3 including, but not limited to, one or more of 35 U.S.C. §§ 101, 102, 103 and/or  
4 112.

5 16. An actual and justiciable controversy exists between FXCM and  
6 Broadband Graphics regarding the invalidity of the claims of the Asserted Patents.

7 17. Accordingly, FXCM hereby seeks entry of a declaratory judgment  
8 that the claims of the Asserted Patents are invalid.

9 **JURY DEMAND**

10 FXCM hereby demands trial by jury of all issues so triable.

11 **PRAYER FOR RELIEF**

12 WHEREFORE, FXCM prays for judgment on Broadband Graphics'  
13 Complaint and FXCM's counterclaims as follows:

14 (a) That the Court enter judgment in favor of FXCM and against Broadband  
15 Graphics on Broadband Graphics' claims;

16 (b) That the Court find that the Asserted Patents are invalid and not infringed  
17 and issue declaratory judgments against Broadband Graphics and in favor of  
18 FXCM on FXCM's counterclaims;

19 (c) That the Court find this to be an exceptional case within the meaning of  
20 35 U.S.C. § 285;

21 (d) That FXCM be awarded its costs of suit and attorneys' fees as allowed  
22 by law; and

23 (e) For such other and further relief as the Court may deem just and proper.  
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1 Dated: November 29, 2010

s/ Michael B. Levin

Michael B. Levin (*pro hac vice*)

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**CERTIFICATE OF SERVICE**

I hereby certify that I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following:

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Dated: November 29, 2010

s/ Michael B. Levin  
Michael B. Levin (*pro hac vice*)